

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

ERNEST LEE

Plaintiff,

V.

**STATE FARM FIRE AND
CASUALTY INSURANCE**

Defendant.

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No. _____

JURY DEMAND

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant State Farm Fire and Casualty Company, improperly named as "State Farm Fire and Casualty Insurance" in Plaintiff's Original Petition and referred to herein as "State Farm" or "Defendant," files this Notice of Removal to the United States District Court for the Northern District of Texas, Abilene Division, on the basis of diversity of citizenship and amount in controversy and respectfully show:

I.

FACTUAL AND PROCEDURAL BACKGROUND

1. On July 10, 2015, Plaintiff Ernest Lee filed his Original Petition in the matter styled *Ernest Lee v. State Farm Fire and Casualty Insurance*, Cause No. 49098-A, in the 42nd Judicial District Court of Taylor County, Texas. The lawsuit arises out of a claim Plaintiff made for damages to his home under a homeowner's insurance policy no. 84-TV-9505-5, issued by State Farm Lloyds, effective July 28, 2013 through July 28, 2014.

2. Defendant State Farm files this Notice of Removal within 30 days of receiving Plaintiff's pleading. *See* 28 U.S.C. §1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

3. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. §1446(a). A copy of this Notice is also concurrently being filed with the state court and served upon the Plaintiff.

4. As required by 28 U.S.C. § 1446(a), and Rule 81.1 of the Local Rules for the United States District Court of the Northern District of Texas, being filed simultaneously with the filing of this Notice of Removal is an Index of State Court Documents, which is attached hereto as Exhibit "A." A copy of the District Clerk's Case Summary sheet is attached hereto as Exhibit "B." A copy of the Civil Case Information Sheet is attached hereto as Exhibit "C." A copy of Plaintiff's Original Petition is attached hereto as Exhibit "D." A copy of Plaintiff's Letter Requesting Jury Trial is attached hereto as Exhibit "E." A copy of Plaintiff's July 10, 2015 Letter Requesting Citation is attached hereto as Exhibit "F." A copy of the Citation to State Farm Fire and Casualty Insurance Company is attached hereto as Exhibit "G." A copy of Plaintiff's Affidavit of Lost Citation is attached hereto as Exhibit "H." A copy of Plaintiff's October 12, 2015 Letter Requesting Citation is attached hereto as Exhibit "I." A copy of the Citation to State Farm Fire and Casualty Insurance Company is attached hereto as Exhibit "J." A copy of Defendant's Original Answer to Plaintiff's Original Petition is attached hereto as Exhibit "K." Also included with this filing are Defendant's Certificate of Interested Persons, which is attached hereto as Exhibit "L," and a Supplemental Civil Cover Sheet.

5. Venue is proper in this Court under 28 U.S.C. §1441(a) because this district and division embrace Taylor County, Texas, the place where the removed action has been pending and where the incident giving rise to this lawsuit took place.

II.
BASIS FOR REMOVAL

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§1332(a), 1441(a) and 1446.

A. Diversity of Citizenship

7. Plaintiff is, and was at the time the lawsuit was filed, a resident of Taylor County, Texas, and a citizen of the State of Texas. *See* Pl's Original Pet. ¶ 3, attached hereto as Exhibit "D."

8. Defendant State Farm Fire and Casualty Company was at the time this action was commenced, and still is, a citizen of the State of Illinois. State Farm Fire and Casualty Company is a corporation organized under the laws of the State of Illinois and maintains its principal place of business in McLean County, Illinois. Therefore, complete diversity of citizenship exists between Plaintiff and State Farm Fire and Casualty Company.

9. Because Plaintiff is a citizen of Texas and Defendant State Farm Fire and Casualty Company is a citizen of Illinois, complete diversity of citizenship exists in this matter.

B. The Amount in Controversy Exceeds \$75,000.00

10. This is a civil action in which the amount in controversy exceeds \$75,000.00. In his complaint, Plaintiff alleges a variety of claims "revolv[ing] largely around a first party insurance dispute regarding the extent of damages and amount of loss suffered to the Plaintiff's Property." *See* Pl's Original Pet. ¶ 5, attached hereto as Exhibit "D." Among other things, Plaintiff alleges that Defendant State Farm breached the insurance policy number 84-TV-9505-5, with a Dwelling Limit of \$116,326.00, a Dwelling Extension Limit up to \$11,633.00, and a Contents Limit of \$87,245.00, for the property located at 60 Harvard Place, Abilene, Texas 79603 (the property giving rise to the present dispute). *See* Exhibit "M," Declaration of Scott L.

Rogers, attached hereto and fully incorporated herein as if set out in full. In determining the amount in controversy, the Court may consider “policy limits ... penalties, statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

11. In addition, Plaintiff’s Original Petition seeks damages for negligence, breach of contract, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Insurance Code, breach of the duty of good faith and fair dealing, breach of fiduciary duty, misrepresentation, and fraud by negligent misrepresentation. Plaintiff asks to be awarded actual damages, consequential damages, prejudgment interest, additional statutory damages, post judgment interest, attorney’s fees, and court costs. Plaintiff claims that he is seeking “monetary relief over \$100,000 but not more than \$200,000.” *See* Pl’s Original Pet. ¶ 70, attached hereto as Exhibit “D.” Based on the limits of the underlying insurance policy and the allegations set forth in Plaintiff’s Original Petition, the amount in controversy in this case exceeds the \$75,000.00 jurisdictional requirement.

Conclusion and Prayer

12. All requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. Accordingly, Defendant State Farm Fire and Casualty Company hereby removes this case to this Court for trial and determination.

/s/ Rhonda J. Thompson

Rhonda J. Thompson
State Bar No.: 24029862
Scott L. Rogers
State Bar No.: 24064369

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**COUNSEL FOR DEFENDANT
STATE FARM FIRE AND
CASUALTY COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of November, 2015, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

Bill L. Voss
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Counsel for Plaintiff

/s/ Rhonda J. Thompson

Rhonda J. Thompson